IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

OP.No. 2788 of 2003(F)

PETITIONERS:
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1. M.PAUL ROJ S/O.MICHAEL,
   ERUTHEANPATHI P.O. (VIA) KOZHINJAMPARA,
   PALAKKAD DISTRICT 678 555

2. K.ABDUL LATHIEF S/O. KADER MOIDEEN,
   VENTHAPALAYAM, ANTHIKODE P.O.
   (VIA) NATTUKKAL, PALAKKAD DISTRICT 678 554.
   (P.D. TEACHER, G.L.P.SCHOOL
   SOURIAR PALAYAM, PALAKKAD)

BY ADV. SRI.ALEXANDER THOMAS
ADV. SRI.SANTHOSH.S.

RESPONDENTS:
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1. THE SECRETARY, GENERAL EDUCATION
   DEPARTMENT, GOVERNMENT OF KERALA,
   THIRUVANANTHAPURAM.

2. THE SECRETARY, FINANCE (PRC)
   DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

3. THE DEPUTY DIRECTOR OF EDUCATION
   OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION,
   CIVIL STATION, PALAKKAD.

4. THE ASSISTANT EDUCATIONAL OFFICER,
   CHITTUR, PALAKKAD DISTRICT.

BY GOVERNMENT PLEADER SRI.P.K. RAVIKRISHNAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 26/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.2788/03

ORDERS ON C.M.P.4988/03 AND I.A.NOS.4623/04,15041/05 IN O.P.2788/03

DISMISSED

26.02.2007. SD/- S.SIRI JAGAN, JUDGE.

APPENDIX

EXT.P1: TRUE COPY OF SAID GOVERNMENT ORDER NO.20.20/81GEN.EDN.DATED 30.01.81.

EXT.P2: TRUE COPY OFGOVERNMENT ORDER NO.170/78/G.EDN.DATED 7.12.78.

EXT.P3: A TRUE COPY OF THE GOVERNMENT ORDER NO.(P) 101/80/167/FIN.DATED 30.01.80.

EXT.P4: TRUE COPY OF THE REPRESENTATIONS DATED 16.04.2001.

EXT.P5: TRUE COPY OF THE REPRESENTATIONS DATED 16.04.2001.

EXT.P6: TRUE COPY OF THE COMMUNICATION DATED 23.10.2001.

EXT.P7: TRUE COPY OF THE CLARIFICATION DATED 24.2.99.

EXT.P8; TRUE COPY OF THE COMMUNICATION IN RESPECT OF 1ST PETITIONER DATED 02.08.2002.

EXT.P9: TRUE COPY OF THE COMMUNICATION DATED 9.10.2002.

/TRUE COPY/

PA TO JUDGE.

S. SIRI JAGAN, J.

O.P.NO. 2788 OF 2003

DATED THIS THE 26th DAY OF FEBRUARY, 2007

JUDGMENT

Petitioners are L.P. School Teachers. When they entered into service, they did not have the training qualification. Subsequently they obtained training qualification, consequent to which their pay was refixed in the scale applicable to trained teachers. That was sometime in the years 1970 and 1971 respectively. After a long period of thirty years, in 1997 the audit party raised an objection that on acquisition of the necessary educational qualification only an increment can be given and the petitioners' initial pay cannot be refixed. This decision was apparently based on Ext.P1 Government Order. According to petitioners, Ext.P1 Government Order is contrary to another Government Order Ext.P2, which has not been cancelled and therefore Ext.P1 order cannot be applied in their case. Notwithstanding their said contention, in view of the probable change in pay on account of this audit objection, the petitioners applied for permitting them to exercise re-option on the basis of Ext.P3 Government Order. Petitioners would submit that this was recommended by Accountant General also. However, the Government rejected the claim of

petitioners on the ground that no re-option can be allowed. In the above circumstances, the petitioners again approached the Accountant General with representations to sustain the original fixation of pay made during the years 1970 and 1971 respectively. Since it evoked no response from the Accountant General, petitioners approached this Court by filing O.P.5754/2002 in which this Court directed the Accountant General to consider the petitioners' representations and pass appropriate orders. The Accountant General did not pass any orders pursuant thereto also, instead orders have been issued for re-regulation of pay of the petitioners as proposed, despite Ext.P8 communication from the A.E.O recommending the case of petitioners. The petitioners are now challenging Exts.P6 and P9 communications. Ext.P6 is the order by which the petitioners' request for re-option has been rejected. Ext.P9 is the communication of the Accountant General by which the petitioners' pay was directed to be re-regulated in accordance with the audit objection.

2. I have heard the learned Counsel for petitioners as also the learned Government Pleader.

3. Admittedly the petitioners pay was re-fixed in 1970 and 1971. Almost for a very long period of thirty years nobody objected to the said pay fixation. It is not disputed before me that there are conflicting Government Orders on the subject of pay fixation in such

circumstances, namely Exts.P1 and P2. When the petitioners were prepared even to accept the audit objection and sought permission for re-option, then also the Government took the stand that they cannot be given the benefit of re-option inspite of the fact that the Accountant General recommended opportunity to the petitioners for re-option.

4. In the above circumstances, I am of opinion that such lowly paid employees should not be harassed by such audit objections raised after a period of 30 years, that too based on a Government Order, which is directly in conflict with another Government Order which was in operation earlier, and was not cancelled also. Therefore it is not in the interest of anybody to change the settled position now after 30 long years. Therefore I quash Ext.P9. Since I am quashing Ext.P9, it is not necessary to quash Ext.P6 which relates to re-option since their original fixation is being sustained. Therefore I hold that the petitioners are entitled to keep their fixation of pay as done in 1970 and 1971 despite the audit objection raised in 1997. The first petitioner has already retired from service on 31.3.05 and second petitioner is due to retire on 31.3.07. I direct that their pay shall be regulated without reference to the audit objection and the same would be governed by the fixation made in 1970 and 1971. All further service benefits applicable to the petitioners shall be on that basis only and the

retirement benefits of first petitioner shall also be re-computed on that basis. Any service benefits like increments, higher grade promotion, Headmasters' scale etc.,if any applicable, which has been denied to the petitioners shall be restored to them on the basis that their original pay fixation in 1970 and 1971 is perfectly in order. The orders regarding the regulation of petitioners' pay and service benefits accordingly shall be passed within a period of three months from the date of receipt of a copy of this judgment and consequential monetary benefits shall be disbursed within another one month therefrom.

The original petition is allowed as above but without any order as to costs.

S. SIRI JAGAN, JUDGE

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